

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA-10-0161

BNSF RAILWAY COMPANY,
Appellant/Petitioner

v.

CHAD CRINGLE and MONTANA DEPARTMENT OF LABOR and
INDUSTRY, HUMAN RIGHTS COMMISSION
Appellee/Respondents

APPELLEE'S OPENING BRIEF

**ON APPEAL FROM THE FIRST JUDICIAL DISTRICT COURT
LEWIS & CLARK COUNTY, HONORABLE JEFFREY M
SHERLOCK PRESIDING**

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STATEMENT OF THE ISSUES

The Appellant/Petitioner, Burlington Northern Santa Fe Railway Company (BNSF), raises two issues on appeal for the Court's consideration.

Appellees/Respondents Department of Labor and Industry and Human Rights Commission (Department or HRC) contends there is only one controlling and dispositive issue before the Court. Consequently, the Department restates the issue as follows:

Did the district court correctly dismiss BNSF's petition for judicial?

STATEMENT OF THE CASE

The Department's administrative process for complaints of discrimination has three separate phases: (1) informal investigation; (2) contested case proceeding before the Department of Labor and Industry's Hearings Bureau; and (3) review by the Montana Human Rights Commission (HRC). *Mont. Code Ann. § 49-2-501, et seq.* The Department's Hearings Bureau issued its decision on September 2, 2009. BNSF filed an untimely appeal.¹ BNSF petitioned the district court for review. In addition, BNSF requested extraordinary relief.

¹ A dissatisfied party has the right to appeal a hearings bureau decision within 14 days to HRC. *Mont. Code Ann. § 49-2-505(4)*. If the dissatisfied party does not appeal to the HRC within 14 days of the hearings bureau order, the order becomes final and is "not appealable" to a district court. *Mont. Code Ann. § 49-2-505(3(c))*.

On review, the district court determined that HRC did not err in dismissing BNSF's appeal and that there was no basis to extend the deadline for filing. By operation of statute, the hearings bureau decision was "final" and not appealable to the district court, so the district court dismissed BNSF's petition.

BNSF then filed this appeal to the Supreme Court.

STATEMENT OF THE FACTS

Fortunately, there are only a handful of relevant facts and better yet, the parties agree on those facts. Where possible the Department will refer to Exhibits attached to the Appellant's Opening Brief:

On September 2, 2009, the Department of Labor and Industry's Hearings Bureau issued a decision in the *Chad Cringle v. Burlington Northern Santa Fe Railway Co.*, Case No. 1233-2009. *BNSF Ex. B*. A party that disagrees with the Hearings Bureau's decision has 14-days to appeal that decision to the Human Rights Commission (HRC). *Mont. Code Ann. § 49-2-505(4)*. BNSF, by its own admission, "misplaced" or "misfiled" the notice of decision. *BNSF Ex. D, at 2*. Twenty days later, on September 22, 2009, counsel for BNSF filed a "Notice of Appeal" to HRC along with a request for an extension of the time to appeal. *BNSF Ex. C and D*. As a procedural matter, pursuant to 24.9.103, ARM, the Chair of HRC, Ryan Rusche, dismissed BNSF's request for an extension to file its appeal of the hearings bureau's decision on October 5, 2009. *BNSF Ex. F*.

BNSF then filed a petition for judicial review and in the alternative, BNSF requested relief through extraordinary writ (e.g. mandate, review) and declaratory ruling. *BNSF Ex. G.* Both the Department and Cringle submitted motions to dismiss BNSF's petition and both the Department and Cringle filed petitions to enforce the hearings bureau's September 2, 2009 Final Agency Decision.

Following briefing and oral argument, the district court entered an order on March 15, 2010, finding that HRC did not err in dismissing the appeal and that BNSF failed to appeal the September 2, 2009 order in a timely manner. *BNSF Ex. H.* The district court noted that BNSF failed to "compel" either HRC or the district court to open up the 14-day deadline. *Id.* Since the hearings bureau decision was final, the district court held that it did not have subject matter jurisdiction to review the petition for judicial review and dismissed all outstanding motions and matters. *BNSF Ex. H.* Subsequent to this order, the Court then issued a *Nunc Pro Tunc* order rescinding its dismissal of the petitions to enforce and granting those motions. *BNSF Ex. I.*

BNSF has submitted an appeal to this order to the Montana Supreme Court.

STATEMENT OF THE STANDARD OF REVIEW

The district court dismissed BNSF's petition because it determined that HRC had appropriately dismissed BNSF's appeal. Accordingly, this Court should review HRC's decision to dismiss under the *Winchell* standard of review. *See*

Winchell v. Dep't of Natural Resources and Conservation, 1999 MT 11, 293 Mont. 89, 972 P.2d 1132.

Under *Winchell*, upon a *de novo* review of a proceeding in a case that is not "contested," this Court's standard of review is limited to whether the agency erred in law or whether its decision is wholly unsupported by the evidence or clearly arbitrary or capricious. See *Winchell* at ¶ 10 (citing *Johansen v. Dep't of Natural Resources and Conservation*, 1998 MT 51, 955 P.2d 653). In such a proceeding, this Court should only inquire insofar as to ascertain if the agency has stayed within its statutory bounds and has not acted arbitrarily, capriciously, or unlawfully. *Id*

Having determined that the agency made the correct decision, the district court determined that it lacked subject matter jurisdiction, this Court reviews a district court's determination of subject matter jurisdiction for correctness. *Clouse v. Lewis and Clark County*, 2008 MT 271, ¶ 23, 345 Mont. 208, ¶ 23, 190 P.3d 1052, ¶ 23.

ARGUMENT

SUMMARY OF THE ARGUMENT

On review, the district court determined that given the applicable statutes, HRC "did not err" in dismissing BNSF's appeal. The order then went on to

conclude that the district court did not have subject matter jurisdiction over the petition because BNSF failed to file a timely appeal of the hearings bureau order.

On appeal to this Court, the weight of BNSF's argument focuses on whether the district court has subject matter jurisdiction and whether the 14-day statutory deadline is jurisdictional. However, the Court need not stray into this arena because there are sufficient grounds to conclude that the district court reached the correct conclusion:

First, despite the statement in its conclusion that it lacked subject matter jurisdiction, there is plain language in the district court order that adequately and correctly addresses questions presented by BNSF's petition for judicial review. Second, beyond a doubt, there is no set of facts that suggest that BNSF would be able to establish that HRC erred when it denied BNSF's appeal as untimely, (BNSF admits it filed an untimely appeal). And finally, the district court reached the correct conclusion even if it employed the wrong reasoning.

A party only has 14 days to file an appeal of a hearings bureau decision to HRC. *Mont. Code Ann. § 49-2-505 (4)*. If a party fails to file an appeal within 14 days, then by operation of statute the hearings bureau decision becomes "final" and is "not appealable to a district court." *Mont. Code Ann. § 49-2-505(3)(c)*. Here, BNSF filed an untimely appeal and HRC correctly dismissed BNSF's appeal. On petition for judicial review, the district court may have "subject matter jurisdiction"

to consider the petition itself, but absent some determination that there are grounds to extend the controlling statutory deadline, the hearings bureau decision was final and "not appealable to the district court." Consequently, at this point, the district court's review of the HRC order is meaningless because the district court is barred from considering the merits of the underlying hearings bureau decision. Thus, the district court correctly dismissed the appeal of the HRC's order.

For these reasons, BNSF appeal should be dismissed.

I. The District Court correctly dismissed BNSF's petition for judicial review.

A. The District Court order adequately and correctly addresses issues raised by BNSF in its petition for judicial review.

In BNSF's petition for judicial review, it asked the district court to review and reverse the HRC order on the grounds that HRC has the authority to extend the 14-day period and remand the matter to HRC to either proceed to the underlying merits of the appeal or consider BNSF's request for an extension. *BNSF Ex. G*. BNSF also requested extraordinary and declaratory relief. *Id.*

Despite the fact that the district court states in its conclusion paragraph that it does not have subject matter jurisdiction over BNSF's petition, there is plain language in the district court order that expressly addresses the merits of BNSF's petition for judicial review. The order specifically finds that "HRC does not have the authority to lengthen statutory deadlines and **did not err** in failing to extend

the statutory deadline on BNSF's behalf." *BNSF Ex. I, at 4 (emphasis added)*.

With regard to the extraordinary and declaratory relief, the district court held that there is "no basis to compel any action from this [district court] or HRC." *Id.*

Given this language, applying the appropriate standard of review, this Court's inquiry is limited to whether the agency erred in law or whether its decision is wholly unsupported by the evidence or clearly arbitrary or capricious. *Winchell*, at ¶ 11. BNSF filed an untimely appeal. Further, the district court correctly determined there was no basis to compel extraordinary or declaratory relief. Even in the light most favorable to BNSF, it appears beyond a doubt that BNSF can prove no set of facts to support its claim which would entitle it to relief. HRC's denial of BNSF's appeal operates in accord with the plain language of these statutes.

HRC did not err in law and its decision is wholly supported by the evidence and is neither arbitrary nor capricious. The district court's subsequent determination that it lacked subject matter jurisdiction is surplusage because the district court reached the correct result. This Court can affirm a district court if it reaches the right result even if its reasoning may not be entirely correct. *PPL Mont., LLC v. State*, 2010 MT 64, ¶ 112, 355 Mont. 402, ¶ 112, 229 P.3d 421, ¶ 112; *See also Tisher v. Northwest*, 260 Mont. 143, 145, 859 P.2d 984 (1993); *Wolfe v. Webb*, 251 Mont. 217 234, 824 P.2d 240, 250 (1992).

For this reason alone, BNSF's appeal should be dismissed.

B. Given the language of Section 49-2-505(3)(c), MCA, when a district court determines there are no grounds to extend a statutory deadline for appeal and by operation of statute the agency decision is final and "not appealable" to a district court, this divests a district court of its authority to consider the Human Rights Commission's denial of an untimely appeal.

BNSF is correct. There is a trend away from the misuse of the term jurisdiction. *See Miller v. 18th Judicial Dist. Ct.*, 2007 MT 149, 337 Mont. 488, 162 P.3d 121. But, even assuming the district court misused the word "subject matter jurisdiction," it does not change the outcome of this case.

Montana's Constitution confers a district court with the authority to directly review a decision of an executive agency as provided for by the Legislature. *Mont. Const. Art. VII, Sec. 4*. The Legislature, through statute, has removed the right of a district court to review a hearings bureau decision if more than 14 days have passed after the issuance of the notice of decision (and a party has not filed a timely appeal to HRC). *Mont. Code Ann. § 49-2-505(3)(c)*. Thus, the only truly relevant question before the district court was whether BNSF presented adequate grounds (via legislation) to extend the 14-day deadline. It did not.

As stated in its order, the district court finds BNFS "missed the appeal deadline and there was no basis to compel any action from [the district court] or HRC." *BNSF Ex. I, at 4*. Without grounds to extend the deadline, the hearings

bureau decision became untouchable. And, if the hearings bureau decision is untouchable, then the district court's review of the HRC denying the appeal is meaningless. (Said another way, without grounds to extend the 14-day deadline, HRC's denial of the appeal becomes superfluous.)

BNSF tried to get around the 14-day deadline via requests for extraordinary relief, specifically a writ of review or mandate, or a declaratory ruling.² But, these arguments fail miserably.

Looking first at the writ of review, BNSF had to show that HRC, in exercising its judicial function,³ exceeded the jurisdiction of the tribunal. *Mont. Code Ann. § 27-25-102*. Similarly, a writ of mandate would have required a showing that HRC acted unlawfully in dismissing BNSF's appeal. *Mont. Code Ann. § 27-26-102*. But, there is no dispute that BNSF's appeal was untimely and that HRC's denial of BNSF's appeal operates in accord with the plain language of these statutes. Further, by rule, HRC cannot alter "dates fixed by statute."

² It appears the 14 day deadline is controlling as it pertains to the Human Rights Commission. Arguably, there are other legal mechanisms at a party's disposal before a district court. For example, a party could request equitable relief from a district court in the event that disability precluded a timely appeal to HRC. Similarly, it is conceivable that a party could argue estoppel in the event that the agency provided inaccurate or misleading information. Of course, neither of these apply in this case, and neither of these arguments were raised. This case is about "misplaced" documents.

³ It is arguable that the denial of the appeal was a ministerial act because HRC has no discretion to extend the deadlines. The Chair signed the order without convening HRC, pursuant to Admin. R. Mont. 24.9.103(3).

Except as to dates fixed by statute and not subject to modification, the commission may enlarge the time to perform an act. In accordance with Rule 6(b) of the Montana Rules of Civil Procedure, the time may be enlarged for good cause shown.

Admin. R. Mont. 24.9.113(3) (emphasis added)

As for a declaratory ruling or judgment, BNSF is seeking a declaration that HRC has the authority to extend the deadline for an appeal of a hearing officer's decision to HRC. The district court clearly ruled on this issue in its decision when it stated, "HRC cannot be compelled by this Court to expand the fourteen [day] period set forth in statute." *BNSF Ex. I, at 4*. Moreover, declaratory rulings are intended to "liquidate uncertainties and controversies which might result in future litigation and to adjudicate rights of parties who have not otherwise been given an opportunity to have those rights determined." *Matter of Dewar*, 169 Mont. 437, 444, 548 P.2d 149, 154 (1976) (citing 22 Am. Jur. 2d Declaratory Judgments 1, 2, 6). Such rulings are not intended to serve as a "vehicle to obtain relief from rulings within the jurisdiction of administrative bodies or commissions in the process of exercising their quasi-judicial functions and/or powers." *Id.* at 444-445, 548 P.2d at 154. So, unless BNSF intends on making a habit out of misplacing documents and filing late appeals, a declaratory ruling would be inappropriate.

Since BNSF failed to establish grounds to extend the 14-day deadline, the hearings bureau's decision is final and cannot be disturbed. It would be illogical for the district court to review HRC's denial of the appeal.

Again, this Court can affirm a district court if it reaches the right result even if the reasoning may not be entirely correct. *PPL Mont., LLC v. State*, 2010 MT 64, ¶ 112, 355 Mont. 402, ¶ 112, 229 P.3d 421, ¶ 112; *See also Tisher v. Northwest*, 260 Mont. 143, 145, 859 P.2d 984 (1993); *Wolfe v. Webb*, 251 Mont. 217 234, 824 P.2d 240, 250 (1992).

CONCLUSION

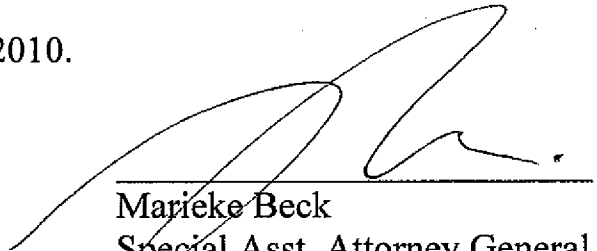
This mountain of paper deflects from the bottom line: Even if this Court were to find that the district court erred and that it had the subject matter jurisdiction to consider the HRC order denying the appeal, this Court is still left with the fact that BNSF offers nothing that would support a conclusion that HRC erred in its decision to deny BNSF's appeal. Further, BNSF provides absolutely nothing that would indicate that there is any reason for this Court, a district court, or HRC to extend the 14-day deadline. This case is not about a violation of a party's due process rights, rather this fiasco revolves around misplaced or misfiled paperwork.

For these reason, the district court adequately and correctly addressed issues raised by BNSF's appeal and correctly applied the law. Therefore, its judgment

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should be affirmed.

Dated this 6th day of August, 2010.

A handwritten signature in black ink, consisting of a large, stylized 'M' followed by a smaller 'B' and a horizontal line.

Marieke Beck
Special Asst. Attorney General
Department of Labor and Industry

CERTIFICATE OF SERVICE

This is to certify that on the 6th day of August, 2010, a true and exact copy of the foregoing document was sent by U.S. mail, first class, postage pre-paid, addressed to:

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that the Appellee's Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Office Word 2007, and is not more than 10,000 words, excluding table of contents, table of citations, certificate of service and certificate of compliance.

Dated this 6th day of August, 2010.


Aleisha Solem
Legal Secretary
Department of Labor and Industry